

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WP(C).No. 25525 of 2006(L)

PETITIONER:

J.PUSHPANGATHAN, PROPRIETOR,
J.P.INDUSTRIES, PADINJATTUMUKKU,
CHITTATTUMUKKU P.O., (VIA) KANIYAPURAM,
TRIVANDRUM.

BY ADV. SMT.V.P.SEEMANDINI
SRI.M.S.UNNIKRISHNAN
SMT.S.KARTHIKA
SMT.K.P.GEETHA MANI
SRI.T.R.RAJESH
SRI.M.R.ANISON
SMT.T.B.REMANI

RESPONDENTS:

1. THE DISTRICT COLLECTOR,
TRIVANDRUM.
2. KADINJANKULAM GRAMA PANCHAYAT,
REP. BY ITS SECRETARY, CHITTATTUMUKKU P.O.,
TRIVANDRUM.
3. THE DIRECTOR OF INDIGENOUS,
M.G.ROAD, AYURVEDIC COLLEGE, TRIVANDRUM.
4. O.GEETHA, GEETHANJALI MADAM,
CHITTATTUMUKKU P.O., KANIYAPURAM,
TRIVANDRUM.

BY ADV. SRI.P.B.SURESH KUMAR
GOVERNMENT PLEADER SRI.K.A.AKBAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX IN WPC NO.25525 OF 2006

PETITIONER'S EXHIBITS:

- EXT.P1:- TRUE COPY OF THE LICENCE ISSUED BY THE 2ND RESPONDENT DATED 5/6/2006.
- EXT.P2:- TRUE COPY OF THE ORDER DATED 17/5/2006 ISSUED BY THE OMBUDSMAN.
- EXT.P3:- TRUE COPY OF THE ORDER DATED 30/8/2006 ISSUED BY THE FIRST RESPONDENT.
- EXT.P4:- TRUE COPY OF THE REPRESENTATION DATED 19/9/2006 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P5:- TRUE COPY OF THE EARLIER LICENCE DATED 1/4/2006 ISSUED BY THE 2ND RESPONDENT.
- EXT.P6:- TRUE COPY OF THE REPRESENTATION DATED 12/8/2006 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P7:- TRUE COPY OF THE ORDER DATED 25/09/2006 ISSUED BY THE 1ST RESPONDENT.
- EXT.P8:- TRUE COPY OF THE COMPLAINT FILED BY THE 4TH RESPONDENT BEFORE THE 1ST RESPONDENT.
- EXT.P9:- TRUE COPY OF THE REPORT OF THE TAHSILDAR, TRIVANDRUM DATED 17.8.2006.

RESPONDENT'S EXHIBITS:-

- EXT.R4(a):- TRUE COPY OF THE ORDER NO.S9-57831/2006 ISSUED BY THE 1ST RESPONDENT DATED 25/09/2006.
- EXT.R4(b):- TRUE COPY OF THE ORDER OF INJUNCTION NO.S9-57831/06(2) ISSUED BY THE FIRST RESPONDENT DATED 25/9/2006.

[TRUE COPY]

PA TO JUDGE

R.BASANT, J

W.P.C.No.25525 of 2006

Dated this the 5th day of December 2006

O R D E R

The petitioner has come to this court, aggrieved by Ext.P3 order dated 30/08/2006, which on the face of it states that it is an order under Chapter 10B of Section 133 Cr.P.C. The petitioner has come to this court alleging that the order is grossly illegal and does not comply with the terms of Chapter 10B. The petitioner came to know after the writ petition was filed that the District Collector has subsequently withdrawn Ext.P3 order but have chosen to issue a fresh conditional order under Section 133 Cr.P.C. A copy of that order dated 25/09/2006 is produced as Ext.R4(a) by the respondent and as Ext.P7 by the petitioner. The respondent, District Collector proceeded simultaneously to pass a further order under Section 142 Cr.P.C (a copy of which is produced as Ext.R4(b)).

2. The dispute is about the conduct of a workshop by the petitioner. A neighbour, respondent No.4 is running an Ayurvedic Hospital adjacent to the said workshop. She complained of nuisance and approached the District Collector. It is thereupon that Ext.P3 as well as Exts.R4(a) and R4(b) orders have been passed by the District Collector.

3. The learned counsel for the petitioner submits that the petitioner is willing to appear before the District Collector, in accordance with the provisions of Chapter 10B. He only prays that the order of injunction under Section 142 Cr.P.C (copy of which is produced as Ext.R4(b) may be suspended and the District Collector may be directed to pass a fresh order under Section 142 Cr.P.C, after hearing both parties.

4. The learned counsel for the petitioner submits that Ext.R4 (b) order and the application filed by the petitioner before the District Collector are vitiated in as much as they do not make any mention of Ext.P2 order passed by the Ombudsman for Local Self Government Institutions. That clearly shows that the Ombudsman had called for a report of the Pollution Control Board and the report was placed before the Ombudsman who did not pass any orders restraining the petitioner from continuing with the running of his workshop. That order is seen passed on 17/05/2006. But when the petitioner moved, the District Collector with Ext.P8 petition on 01/08/2006, significantly and surprisingly, no mention whatsoever was made of the earlier proceedings which culminated in Ext.P2 order in which proceedings the report of the Pollution Control Board had been obtained. I find merit in the submission of the learned counsel for the petitioner that

bonafides is not an attribute that one can discover or invent in the hands of the petitioner. In having suppressed information about Ext.P2 order in the subsequent application filed by the fourth respondent before the District Collector, it is eloquent that the fourth respondent wanted to steal an order from the District Collector without revealing the crucial and vital facts.

5. Be that as it may, I do not intend to express any final opinion on any other disputed question. I am satisfied that there is merit in the submission of the learned counsel for the petitioner that Ext.R4(b) order dated 25/09/2006 under Section 142 Cr.P.C deserves to be set aside now. The District Collector, that is respondent No.1, needless to say, shall be entitled to proceed further with the proceedings initiated under Section 133 Cr.P.C. If it be necessary, he shall of course be entitled to pass appropriate further orders under Section 142 Cr.P.C also. But such order can be passed now only after hearing the petitioner and giving him an opportunity to raise all his contentions.

6. In the result, this writ petition is allowed. Ext.R4(b) order dated 25/09/2006 passed by the first respondent under Section 142 Cr.P.C is hereby set aside. If circumstances warranting such course exist, the District Collector (first respondent) shall be at liberty to

pass appropriate further orders under Section 142 Cr.P.C but only after hearing the petitioner and considering his contentions. The parties shall appear before the District Collector on 15/12/2006 to continue the proceedings.

7. The learned counsel for the fourth respondent submits that there is no specific request to quash Annexure R4(b). That technicality cannot certainly restrain this court from passing the above order invoking the constitutional jurisdiction under Article 226/227 Cr.P.C in as much as the writ petition when it was filed was filed assailing an identical order under Section 142 Cr.P.C passed by the District Collector. The respondent shall also be entitled to raise all his contentions before the first respondent including the contention that the order of the Ombudsman has not been complied with fully by the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006